

Overcoming the Limited Tort Threshold For Pennsylvania Auto Accident Victims

By: Robert S. Waldman

If you have been injured in a car accident in Pennsylvania, your rights, especially the right to sue, are governed by the Pennsylvania Motor Vehicle Financial Responsibility Law, or "MVFRL." The MVFRL outlines each person's rights and, depending upon the type of insurance you have, whether you are entitled to recover damages for pain and suffering.

Most importantly, for people injured in an auto accident in Pennsylvania, the key issue whether your claim is subject to the "full tort" or "limited tort" threshold under the MVFRL, 75 Pa.C.S.A. Section 1705. In this article, I will outline the differences between the two types of coverage and why it is so important for you to have full tort coverage.

Simply put, with full tort coverage, an auto accident victim is entitled to be compensated for pain and suffering, excess medical bills and any other losses arising from the accident, regardless of how serious the injuries are (of course, they still have to prove that the other driver was negligent, that is, responsible for the victim's injuries). On the other hand, persons subject to the limited tort threshold have to prove that they suffered a "serious injury" in order to receive compensation.

Of note, when you purchase "limited tort" coverage, you only save about ten percent on the cost of your insurance. In exchange for saving about 10 percent on your insurance bill, you give up your right to sue for pain and suffering unless you have suffered a "serious injury."

There are exceptions that automatically "convert" limited tort coverage to full tort coverage under the MVFRL, including:

- * The other driver is convicted of (1) driving under the influence of alcohol, or (2) a controlled substance, or (3) accepts ARD, a program generally applicable only to first-time offenders;
- * The other driver committed an intentional act that caused the injuries;
- * The other driver was operating a vehicle registered in a state other than Pennsylvania;
- * The other driver had no insurance.

The Pennsylvania courts, including the Pennsylvania Supreme Court, have considered what a "serious injury" is many times and apply its definition narrowly. The MVFRL defines a "serious injury" as a "Personal injury resulting in death, serious impairment of body function or permanent serious disfigurement." Although this definition sounds fairly broad, Pennsylvania Courts have consistently ruled that a "serious injury" means a VERY serious injury. In other words, what are often called whiplash injuries that heal in a few months are not generally "serious injuries," and persons who suffer those injuries essentially give up their right to sue for pain and suffering when they purchase "limited tort" coverage.

As a result, it is obviously best if you have full tort coverage. If you do not, then you and your attorney should analyze how to prove that you suffered a serious injury. In most cases, this means documenting how the injuries changed your life following the accident. Keep a diary, keep notes, take photos, do whatever you have to do show how your injuries prevented you from doing the things you usually did, and the limitations were serious, not trivial.

Injuries from car accidents often effect people for the rest of their lives. Even what seems to be a relatively minor back or neck injury can be far worse if it causes chronic pain and discomfort. If you have been injured in a car accident, you need to be sure that you can overcome the limited tort threshold by showing why your injuries are different and more serious than the ones suffered by others whose claims were barred by the limited tort threshold.

About The Author:

Philadelphia personal injury/auto accident attorney Robert S. Waldman has fought for the rights of injured persons for over 30 years. He concentrates his practice in workers' compensation, auto accident and other personal injury matters. His website is <http://www.lawonyourside.net>.

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